

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 256

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UNITED STATES, APPELLANT

*vs.*

JOHN W. COOK

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

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the Middle District of Tennessee, Nashville Division

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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Criminal No. 13,717

18 U.S.C. § 660

UNITED STATES OF AMERICA

*v.*

JOHN W. COOK

INDICTMENT—Filed December 15, 1964

The Grand Jury charges:

On or about the 10th day of June 1964, in the Nashville Division of the Middle District of Tennessee, John W. Cook, being an employee, that is, a truck driver for Tolbert Hawkins, an individual engaged in commerce as a common carrier, riding in and upon a truck of such carrier moving in interstate commerce from Tampa, State of Florida, to Lebanon, State of Tennessee, wilfully and knowingly did embezzle, steal and convert to his own use monies of the said carrier arising and accruing from such commerce, to wit, the sum of approximately \$200.00, which sum was part of the monies of said carrier arising and accruing from an interstate shipment of bananas from Tampa, Florida, to Lebanon, Tennessee.

In violation of Title 18, United States Code, Section 660.

A TRUE BILL

/s/ Claude B. Garrison  
Foreman

/s/ James F. Neal  
United States Attorney

[ fol. 1 A ]

Form No. 135

No. ....

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

THE UNITED STATES OF AMERICA

vs.

JOHN W. COOK

INDICTMENT

18 U.S.C., § 660

*A true bill ,**/s/ Claude B. Garrison*  
*Foreman,**Filed in open court this ..... day of ....., A. D. 19.....**Clerk.**Bail, \$.....*

[ File Endorsement Omitted ]

[fol. 2]

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

No. 13,717

[File Endorsement Omitted]

UNITED STATES OF AMERICA

v.

JOHN W. COOK

MOTION TO WITHDRAW PLEA OF NOT GUILTY AND TO  
DISMISS INDICTMENT—Filed March 17, 1965

1. Comes the defendant, John W. Cook, and moves the Court that he be permitted to withdraw his plea of not guilty, heretofore entered in this cause.

2. The defendant, John W. Cook, further moves the Court to dismiss the indictment, heretofore returned against him by the Grand Jury, upon the following ground:

The indictment is predicated on Title 18, United States Code, Section 660, which statute declares in pertinent part as follows:

"Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any \* \* \* motortruck, \* \* \* of such carrier moving in interstate commerce, embezzles, \* \* \* any of the moneys, \* \* \* of such firm, association or corporation arising or accruing from \* \* \* such commerce, \* \* \* shall be fined not more than \$5,000 or imprisoned not more than ten years, or both."

Said indictment is fatally defective on its face in that it charges the defendant with embezzlement of moneys

as an employee of an individual engaged in interstate commerce, whereas the statute penalizes embezzlement by an employee of a firm, association, or corporation engaged in such commerce.

Respectfully submitted,

/s/ Thomas H. Peebles III  
Attorney for Defendant

[fol. 3]

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

Criminal No. 13,717

UNITED STATES OF AMERICA

*v.*

JOHN W. COOK

ORDER DISMISSING INDICTMENT—March 18, 1965

Upon motion of the defendant to dismiss the indictment in the above cause on the ground that it fails to charge an offense against the United States and upon argument of counsel, the Court is satisfied that the indictment, in charging that the defendant acted as an employee of "an individual" fails to charge a violation of 18 U.S.C., § 660 which only forbids the proscribed acts when committed by employees of a "firm, association or corporation", and it is accordingly

ORDERED, ADJUDGED AND DECREED by the Court that the indictment in the above cause be dismissed and that the Marshal release the defendant.

/s/ Frank Gray, Jr.  
United States District Judge

Approved for Entry:

JAMES F. NEAL  
United States Attorney

/s/ Carrol D. Kilgore  
CARROL D. KILGORE  
Assistant U.S. Attorney

March 18, 1965

[fol. 4]

## IN THE UNITED STATES DISTRICT COURT

## DOCKET ENTRIES

THE UNITED STATES

*vs.*

JOHN W. COOK, Metro Jail, Nashville, Tennessee

VIOLATIONS; Sec. 660, ONE (1) COUNT  
 Title 18 USC. (Embezzlement of moneys from Carrier  
 moving goods interstate commerce, etc).

## ATTORNEYS

*For U. S.:*

JAMES F. NEAL &amp; Staff

*For Defendant:*

THOMAS H. PEEBLES, III  
 (appointed)

| Statistical Record | Costs      |
|--------------------|------------|
| J.S. 2 mailed      | Clerk      |
| J.S. 3 mailed      | Marshal    |
| Violation          | Docket fee |
| Title              |            |
| Sec.               |            |

| Date     | Proceedings   |
|----------|---|
| 12/15/64 | Indictment filed. (B.O.P.s filed Nov. 2, 1964)  |
| 2/19/65  | Defendant P.N.G.—ORDER entered that this case be set for trial on February 24, 1965.                                  |
| 2/20/65  | OFDER entered that this case, heretofore set to be tried on February 24, 1965—is passed to be reset. Copy to U.S.D.A. |



| Date    | Proceedings  |
|---------|--|
| 3/15/65 | Subpoenas issued to Gene Shehane; Daniel Norton; Kenneth O. Lester; Tolbert Hawkins and Dave Phelps (latter 3 to bring documents) all to appear on behalf of Government 22nd March, 1965—8:00 A.M. Two of each to U. S. Marshal for execution.   |
| 3/17/65 | Motion filed by defendant to be permitted to withdraw his plea of guilty; also MOVES the Court to dismiss the indictment—said indictment is defective in that it charges defendant with embezzlement of moneys as an 'employee of one engaged in interstate commerce whereas the statute penalty is for embezzlement by an employee of a firm, etc, engaged in such commerce. Certificate of service attached. |
| 3/18/65 | ORDER entered that this case be dismissed—upon MOTION of the defendant, on grounds that indictment fails to charge an offense against the United States; ORDERED that the U. S. Marshal release the defendant. Attested copy to U. S. Marshal and one to U.S.D.A.  |
| 4/16/65 | NOTICE of APPEAL to the SUPREME COURT of the UNITED STATES filed by the Plaintiff, the United States of America.   |
| 4/26/65 | Official Court Reporter's transcript filed . . . proceedings had on March 18, 1965.  |
| 4/28/65 | Certified copy of the record designated in the Notice of Appeal delivered to United States Attorney, with transmittal letter.  |

[fol. 5]

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

---

Crim. No. 13,717

[File Endorsement Omitted]

UNITED STATES OF AMERICA, PLAINTIFF

v.

JOHN W. COOK

---

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed April 16, 1965

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I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of March 18, 1965, dismissing the indictment which charged the defendant, John W. Cook with violating 18 U.S.C. 660.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include therein the following:

1. Transcript of docket entries.
2. Indictment.
3. Motion to dismiss the indictment.
4. Order of March 18, 1965, dismissing the indictment.
5. This Notice of Appeal.

III. The following question is presented by the appeal:

Whether an indictment which charges an employee of an "individual" common carrier in interstate commerce with theft of money of his employer accruing from in-

terstate commerce, charges an offense under 18 U.S.C. 660 which proscribes such conduct when committed by the employee "of any firm, association, or corporation engaged in commerce as a common carrier."

[fol. 6] Dated this 15th day of April, 1965.

/s/ James F. Neal  
United States Attorney  
Middle District of Tennessee

[Certificates of Service Omitted in Printing]

[fol. 7]

[Clerk's Certificate Omitted in Printing]

[fol. 8]

# SUPREME COURT OF THE UNITED STATES

No. 256, October Term, 1965

UNITED STATES, APPELLANT

*v.*

JOHN W. COOK

APPEAL from the United States District Court for the Middle District of Tennessee.

ORDER NOTING PROBABLE JURISDICTION—December  
13, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.